

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**ENERGY DIVISION**

**RESOLUTION E-4802  
September 29, 2016**

**R E S O L U T I O N**

Resolution E-4802. Approval with Modifications to *San Diego Gas & Electric Company's 2017 Demand Response Auction Mechanism Results*

**PROPOSED OUTCOME:**

- This Resolution approves, with modifications, the request of San Diego Gas and Electric Company (SDG&E) to approve contracts resulting from its 2017 Demand Response Auction Mechanism (DRAM) Request for Offer (RFO).
- Specifically, this Resolution adopts the contracts that SDG&E submitted to the Commission in AL 2926-E, on July 22, 2016, and requires SDG&E to procure additional contracts to bring SDG&E into compliance with Commission direction.

**SAFETY CONSIDERATIONS:**

- This Resolution approves six (6) power purchase agreements that contain provisions requiring compliance of sellers and their agents with all applicable laws, including laws related to permitting and safe operations. No additional incremental safety measures are or need be associated with this Resolution.

**ESTIMATED COST:**

- Actual costs are confidential at this time.

By Advice Letter 2926-E (San Diego Gas and Electric Company),  
Filed on July 22, 2016.

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**SUMMARY**

This Resolution approves, with modifications, San Diego Gas and Electric Company's (SDG&E) Advice Letter (AL) 2926-E, wherein SDG&E requests Commission approval of six contracts with five counterparties to provide

resource adequacy capacity from demand response resources in 2017. This Resolution also requires SDG&E to procure additional resources from its 2017 DRAM solicitation, up to one of the applicable procurement limitations first articulated in Resolution E-4728 and again in Resolution E-4754.

Within 30 days from the Commission vote on this Resolution, the SDG&E shall file a new Advice Letter with the Energy Division demonstrating compliance with the modifications and directives in this Resolution.

## **BACKGROUND**

As set forth in a Scoping Memo,<sup>1</sup> in Rulemaking (R.) 13-09-011, issued on April 2, 2014, and pursuant to D.14-03-026, a competitive procurement mechanism for demand response (DR) capacity will be developed, piloted and implemented. That Scoping Memo contained an Energy Division staff proposal for a reverse auction mechanism for DR, called the Demand Response Auction Mechanism (DRAM). The Energy Division held one workshop in April 2014, and parties submitted comments relating to the DRAM. Subsequently, parties proposed a Settlement Agreement for Commission consideration in August 2014. The Settlement proposed that the Commission embark upon a pilot of the DRAM with an auction in 2015 for 2016 delivery and a second auction in 2016 for 2017 deliveries.

The Commission accepted the Settlement Agreement,<sup>2</sup> with modifications, in Decision (D.) 14-12-024. Pursuant to D.14-12-024, on April 20, 2015, SCE filed advice letter ("AL") 3208-E, PG&E filed AL 4618-E, and SDG&E filed AL 2729-E, for the first year of the DRAM, and requested the ability to file a second AL for the second year of DRAM. These ALs were approved by the Commission, with modifications, by Resolution E-4728. That Resolution also approved the IOUs'

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<sup>1</sup> The Scoping Memo, *Joint Assigned Commissioner And Administrative Law Judge Ruling And Revised Scoping Memo Defining Scope And Schedule For Phase Three, Revising Schedule For Phase Two, And Providing Guidance For Testimony And Hearings*, is available at: <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M089/K323/89323807.PDF>.

<sup>2</sup> The Commission later modified D.14-12-024 by revising the term "Settlement Agreement" to "Joint Proposal" in D.15-02-007.

request to file a second AL for the second year of DRAM. On October 9, 2015, SCE filed advice letter ("AL") 3292-E, PG&E filed AL 4719-E, and SDG&E filed AL 2796-E, for the second year of the DRAM pilot. The Commission approved the second DRAM auction, for deliveries to the CAISO commencing on January 1, 2017, with Resolution E-4754 on January 28, 2016.

SDG&E filed AL 2926-E on July 22, 2016, and requests approval of the 6 contracts SDG&E entered into as a result of the 2017 DRAM solicitation.

### **NOTICE**

Notice of Advice Letter 2926-E was made by publication in the Commission's Daily Calendar. SDG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

### **PROTESTS**

Advice Letter 2926-E was protested.

On August 11, 2016, AL 2926-E was timely protested by EnergyHub, The Utility Reform Network ("TURN"), EnerNOC, Inc., Johnson Controls, Inc., Comverge, Inc., CPower and EnergyHub (collectively, the "Joint DR Parties"), Dynamic Grid Council, eMotorWerks, OhmConnect and Stem, Inc. (collectively, "Co-DRP"), and Sierra Club, Environmental Defense Fund and Natural Resources Defense Council (collectively, the "Joint Environmental Parties").

SDG&E responded to the protests on August 18, 2016.

### **Relief Requested – Additional DRAM Procurement**

All protestants request similar relief.

First, each protestant supports that the Commission approve the six contracts that SDG&E filed for approval in AL 2926-E. Several parties urge the Commission to do so quickly in order "...to continue to move the DRAM Pilot

process forward expeditiously.”<sup>3</sup> No protestant presented any concern or opposition to any of the contracts.

Second, all protestants assert that SDG&E failed to procure DRAM resources consistent with Commission direction and expectations, as originally articulated in Resolution E-4728 and later reinforced in Resolution E-4754. Specifically, protestants point to the articulation in each Resolution that either the approved amount of Rule 24/32 registrations<sup>4</sup> or the approved budget applicable to the auction are to serve as the upward bound on DRAM procurement. Co-DRP claims that SDG&E “...disregarded the Commission's unambiguous directive in Resolution E-4754 to exhaust its budget or its available customer registrations for the 2017 DRAM”.<sup>5</sup> The Joint Environmental Parties, EnergyHub and The Joint DR Parties also all point to the directives in the two aforementioned Resolutions to procure up to either cap, and point to SDG&E’s failure to do so.<sup>6</sup>

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<sup>3</sup> Advice Letters 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Response Of EnergyHub, filed August 11, 2016, page 2.; supported by TURN Protest to SDG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 4, 2016, page 1.

<sup>4</sup> Rule 24/32 registrations refers to the individual customer accounts and associated data that the IOUs must make available for use by third parties in order to form demand response (DR) resources for offer into the CAISO wholesale energy market. These registrations have been made available on an incremental and increasing basis, in Application (A.) 14-06-001, et al. SDG&E was first authorized 7,000 registrations for purposes of the 2016 DRAM pilot, and later 30,000 to support the 2017 DRAM pilot.

<sup>5</sup> Dynamic Grid Council, eMotorWerks, OhmConnect, and Stem Inc. (“Co-DRP”), Protest of San Diego Gas and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 1.

<sup>6</sup> Advice Letters 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Response Of EnergyHub, filed August 11, 2016, page 3.; Comments of Environmental Defense Fund, the Sierra Club, and the Natural Resources Defense Council on Utility Advice Letters Concerning Demand Response Auction Mechanism (DRAM) Pilot Results, filed August 11, 2016, page 1.; and, Advice Letters (ALs) 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Joint Response Of Comverge, Inc., CPower, Enernoc, Inc., and EnergyHub (“Joint DR Parties”), filed August 11, 2016, pages 4-5.

On this point, TURN states in its protest that SDG&E received additional cost-effective demand response bids that it is not procuring, and provides additional detail as to the specific costs in its confidential protest. TURN objects to SDG&E's limitation on DRAM procurement simply because choosing additional bids would have meant procuring multiple bids from the same provider, and points out that there is a difference between bids that are higher in price and those that are simply market outliers. Further, TURN is of the opinion that the "DRAM appears to be working, with market bids that are less expensive than some existing demand response programs and products."<sup>7</sup>

The Joint DR Parties quote SDG&E's explanation for limiting procurement to the 6 contracts contained in AL 2926-E, that "beyond the top 6 offers, the next (redacted) bids represented higher priced offers from providers already included in the shortlist. As such, we did not see the potential for additional lessons learned from these bids."<sup>8</sup> The Joint DR Parties point to the lack of a reflection of such a limitation in the DRAM rules.<sup>9</sup>

Third, similar, though not identical, requests for relief are found in each protest to AL 2926-E. These requests are summarized as follows:

- Commission directs SDG&E to re-evaluate all DRAM bids received in response to the original solicitation and procure additional DRAM capacity until either the applicable budget limitation is hit or approved Rule 32 registrations are exhausted.<sup>10</sup>

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<sup>7</sup> TURN Protest to SDG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 4, 2016, page 5.

<sup>8</sup> AL 2926-E: San Diego Gas & Electric Company's 2017 Demand Response Auction Mechanism (DRAM) Results, filed July 22, 2016, page 8.

<sup>9</sup> Advice Letters (ALs) 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Joint Response Of Comverge, Inc., CPower, Enernoc, Inc., and EnergyHub ("Joint DR Parties"), filed EAUGUST 11, 2016, page 5.

<sup>10</sup> Dynamic Grid Council, eMotorWerks, OhmConnect, and Stem Inc. ("Co-DRP"), Protest of San Diego Gas and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 1; and, Advice Letters 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Response Of EnergyHub, filed August 11, 2016, page 3.

- Commission directs SDG&E to procure additional DRAM capacity, for delivery starting in March or April 2017, up to either the registration limit, budget cap, or up to a point after which there are clear price outliers.<sup>11</sup>
- Commission should ensure that its procurement directives for the DRAM are satisfied by SDG&E's procurement, and procurement not improperly limited, before approving AL 2926-E.<sup>12</sup>

In its reply filed on August 16, 2016, SDG&E responds to these requests for relief as follows:

- SDG&E is in full compliance with the requirements and directives of the pilot, the Resolutions adopting which intentionally gave SDG&E discretion in the level in which it procured above its minimum procurement target of 2 MWs.<sup>13</sup>
- Requiring SDG&E to procure additional bids from the original DRAM pilot solicitation is impractical because a) the bids are no longer available to SDG&E as bidders have already been informed that they did not win a contract; b) the bid prices may now be different than originally bid; and c) the value to SDG&E of these offers have decreased due to timing issues associated with including new local RA resources in SDG&E's year-ahead showing for RA.<sup>14</sup>
- SDG&E claims that none of the protestants have articulated lessons that could be learned from taking additional offers that are more expensive than the offers that SDG&E accepted and are the subject of AL 2926-E.<sup>15</sup>

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<sup>11</sup> TURN Protest to SDG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 4, 2016, page 1.

<sup>12</sup> Advice Letters (ALs) 4880-E (PG&E), 2926-E (SDG&E), and 3442-E (SCE) (2017 DRAM Pilot Results) - Joint Response Of Comverge, Inc., CPower, Enernoc, Inc., and EnergyHub ("Joint DR Parties"), filed August 11, 2016, pages 2-3.

<sup>13</sup> San Diego Gas & Electric Company's Reply to Protests Of SDG&E Advice Letter 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 18, 2016, page 2.

<sup>14</sup> Ibid, page 5.

<sup>15</sup> Ibid.

### Procurement Ceiling for the DRAM

Each protestant asserts that the Resolutions authorizing the DRAM pilots, Resolutions E-4728 and E-4754, required that SDG&E procure either up to their available Rule 32 registrations or budget cap. No protestant disputes the clarity of this directive. All protestants express concern that SDG&E limited its procurement inappropriately.

Co-DRP states that the Commission's intention was that SDG&E exhaust either its budget or available Rule 32 registrations, and points to the following language in Resolution E-4754:

"For the limited purpose of this pilot alone, we [...] intend for either the budget or available Rule 24 registrations, whichever comes first, to serve as the upward bound on DRAM procurement, and the IOUs are expected to exhaust either."

, and Ordering Paragraph 11 of the same Resolution: "The minimum procurement targets of 10 MWs each for SCE and PG&E, and 2 MWs for SDG&E, are retained for the 2017 DRAM. As with the 2016 DRAM, the IOUs are encouraged to procure up to the 2017 budget limitation or the available authorized Rule 24 registrations, whichever comes first."<sup>16</sup>

Co-DRP goes on to reference SDG&E's interpretation of this directive to mean that "(c)ontract amounts beyond the minimum requirements will be accepted at SDG&E's sole discretion (Per OP 11 of E-4754)".<sup>17</sup> Co-DRP then quotes to the original direction in Decision (D.) 14-12-024, which authorized both the 2016 and 2017 DRAM pilots, which states that "(T)he Utilities may not use their own respective valuation processes as noted in the Settlement", and points out that SDG&E violated this directive.<sup>18</sup>

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<sup>16</sup> Dynamic Grid Council, eMotorWerks, OhmConnect, and Stem Inc. ("Co-DRP"), Protest of San Diego Gas and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, pages 3-4.

<sup>17</sup> SDG&E DRAM RFO documentation.

<sup>18</sup> Dynamic Grid Council, eMotorWerks, OhmConnect, and Stem Inc. ("Co-DRP"), Protest of San Diego Gas and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 4.

In reply, SDG&E claims that it has complied with and exceeded the requirements of the pilot. To support this claim, SDG&E relies on the following points:

- SDG&E exceeded its 2 MW procurement minimum for the pilot.
- The Commission intended to give SDG&E discretion in its DRAM pilot procurement, to procure DRAM resources in such a way to maximize ratepayer benefits and minimize costs.
- Resolution E-4754 encouraged an outcome but does not require the outcome.
- SDG&E's procurement ensures that the pilot is as cost-effective as possible.
- SDG&E's decision to limit procurement in the 2016 DRAM RFO based on its own discretion directly resulted in both bidders submitting lower priced bids into the 2017 solicitation, and a greater level of interest in the 2017 DRAM.
- SDG&E claims multiple times that DRAM bidders are gaming the pilot auctions.<sup>19</sup>

#### Availability of Registrations to Support the 2017 DRAM

Both Co-DRP and TURN, in their protests, point to the fact that Rule 32 registrations approved for the intermediate step of 30,000 registration and associated budget, in Commission Decision (D.) 16-06-008, should have been considered in SDG&E's DRAM procurement. Both parties point to the fact that SDG&E only procured up to their initial registration level of 7,000 registrations, originally approved well in advance of the 2016 DRAM auction.

TURN points to the directive in D.16-06-008 that SDG&E "develop the capability to support a total of 30,000 customer registrations in the CAISO market and begin implementation immediately, with a completion deadline of February 28, 2017," and authorized SDG&E to spend \$2.3 million to implement this capability.<sup>20</sup> TURN further quotes the same decision – "the intermediate implementation step should be ready for the second auction pilot."<sup>21</sup> TURN goes

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<sup>19</sup> San Diego Gas & Electric Company's Reply to Protests of SDG&E Advice Letter 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 18, 2016, pages 2-4.

<sup>20</sup> D.16-06-008, Ordering Paragraphs 4 and 5, p. 34.

<sup>21</sup> Ibid.

on to point out both that 1) SDG&E fails to explain why none of the 30,000 registrations authorized by D.16-06-008 would be available in time for the 2017 DRAM, and 2) why the registrations available for the 2017 pilot were only that portion that were not used in the 2016 pilot, of the initial implementation.<sup>22</sup>

Co-DRP's protest mentions that the original misalignment between the 2017 DRAM RFO schedule was resolved by adjusting the timeline of the 2017 DRAM RFO to align timing with the adoption of D.16-06-008.<sup>23</sup>

In its reply, SDG&E claims that they complied with D.16-06-008, and that the timing for the Rule 32 registration increase is not aligned with the 2017 DRAM. SDG&E does not explain why none of the registrations approved in D.16-06-008 would be available for the 2017 DRAM.<sup>24</sup>

#### Use of Benchmarks in Procurement

Co-DRP points to the prohibition, articulated in The Energy Division's March 16, 2016 letter disposing of SDG&E's AL 2843-E-A, of the use of proprietary or other benchmarks in its solicitation for 2017 deliveries.<sup>25</sup> Co-DRP goes on to point out SDG&E's statement in AL 2926-E that it "evaluated all offers on an identical basis relative to a *proprietary monthly benchmark*".

SDG&E does not respond to this point in its reply to protests.

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<sup>22</sup> TURN Protest to SDG&E Advice Letter No. 2926-E Re. the 2017 DRAM Solicitation, filed August 4, 2016, pages 2-3.

<sup>23</sup> Dynamic Grid Council, eMotorWerks, OhmConnect, and Stem Inc. ("Co-DRP"), Protest of San Diego Gas and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 5.

<sup>24</sup> San Diego Gas & Electric Company's Reply to Protests of SDG&E Advice Letter 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 18, 2016, page 4.

<sup>25</sup> Dynamic Grid Council, eMotorWerks, OhmConnect, and Stem Inc. ("Co-DRP"), Protest of San Diego Gas and Electric Company Advice 2926-E 2017 Demand Response Auction Mechanism (DRAM) Results, filed August 11, 2016, page 4.

## **DISCUSSION**

### **Relief Requested – Additional DRAM Procurement**

First, we agree with all parties regarding the importance of expeditiously approving the six contracts SDG&E has filed with the Commission for approval in AL 2926-E. We have reviewed, and approve, all six contracts as executed by SDG&E and filed with the Commission for approval. This approval is effective as of the original AL filing date of July 22, 2016.

Second, we agree with parties that SDG&E limited its procurement of DRAM resources in a manner inconsistent with Commission expectations. If there was any doubt, we state here that the Commission's expectation is that each IOU procure up to either its approved Rule 24/32 registrations or its budget cap, whichever came first. We agree with TURN that there are more cost-competitive DR bids in SDG&E's second DRAM solicitation than what SDG&E chose to procure and file for approval with the Commission.

We discuss the specific requirements for SDG&E later in this section.

### **Procurement Ceiling for the DRAM**

We disagree with, and are perplexed by, SDG&E's assertion that the Commission fully intended for SDG&E to manage its DRAM procurement in this fashion, and to use its sole discretion in picking bids.

In Resolution E-4754, the Commission expressed disappointment with SDG&E's choice to limit DRAM procurement in 2016, and clarified auction requirements:

*We are disappointed that SDG&E did not procure up to the maximum limits despite our encouragement that they do so. For the limited purpose of this pilot alone, we clarify herein that we intend for either the budget or available Rule 24 registrations, whichever comes first, to serve as the upward bound on DRAM procurement, and the IOUs are expected to exhaust either. We recognize that it is likely impossible to reach either the budget or registration limit exactly, and so we reiterate our strong encouragement that the IOUs to procure as close to these limitations as possible.*

Unlike with the 2016 procurement, we are compelled to address the issue and bring SDG&E's procurement into compliance with Commission directives and expectations.

We remind the utility that the DRAM pilot is just that – a pilot. The point of a pilot is to test new approaches and learn as much as possible within a short period of time, which minimizes risks and maximizes the benefits of a pilot to decision-makers, and eventually to ratepayers, should the pilot evolve into a broader policy. The 2017 DRAM contracts are for no more than 12 months, which further minimizes risk to ratepayers. As clarified in E-4728, cost-effectiveness determinations are not applicable to pilots.

#### Availability of Registrations to Support the 2017 DRAM

We agree with parties that SDG&E provides no clear explanation as to why not one of the 30,000 Rule 32 registrations approved in D.16-06-008 are available for this pilot, given that this Decision fully envisioned that these registrations be available to support the 2017 DRAM pilot.

We find it difficult to believe that SDG&E has absolutely no further capability to accommodate DRAM resources beyond its originally approved 7,000 registrations, for the DRAM pilot, and that somehow the capability to support more than four times more registration capacity will magically appear on the first day of 2017 – two months and two days from the date of this Resolution. If it is indeed true that SDG&E does not have, and will continue not to have, any of this additional capability for the 2017 DRAM, then it begs the question whether SDG&E is on track to comply with D.16-06-008, either.

#### Use of Benchmarks in Procurement

In response to its disposition letter for 2016 DRAM contracts, SDG&E offered to develop, and did develop, a ranking methodology using public RA prices, and socialized that methodology among IOUs. For the 2017 DRAM, all three IOUs ranked bids according to both internal RA prices and public RA prices, and used internal RA bid prices for actual DRAM bid selection. In the case of SDG&E AL 2926-E, the reference to “proprietary benchmark” refers to the use of internal RA prices. For purposes of the 2017 pilot, we find this methodology to be fair and acceptable. That said, we also urge SDG&E, along with other IOUs, to publicly explain the ranking process so as to ensure a greater degree of transparency in bid selection.

Relief for SDG&E

In considering the relief requested by parties, the Advice Letter itself, and staff's conversations with the utility, we find the fairest option is to both:

- 1) Approve the 6 contracts filed in AL 2926-E, with an effective date of July 22, 2016.
- 2) Require SDG&E to turn to the remaining bids on its shortlist, reach out to bidders and offer to sign contracts at the same price as originally submitted, and allow for adjustments in original capacity. SDG&E is required to procure bids as close as possible to its budget limitation or to the point at which it reaches a clear price outlier or there is evidence of market manipulation.

We are sympathetic to SDG&E's claim that the bids it originally received but did not select may not be available for SDG&E any longer. Ideally, SDG&E would be required to hold an additional solicitation to make up the difference in procurement, which would grant bidders whose bids were not chosen to re-submit. Given the date of this Resolution, and the additional time such a new solicitation would require, additional contracts would not be able to offer into the market until too late in 2017, meaning that a new solicitation for 2017 would provide little value at this point.

As stated above, if original bidders are willing to honor their original bids, no adjustments in price may be allowed, but bidders may change their monthly capacity offerings, including reducing capacity to zero for the first few months of the year, as we expect may be necessary due to timing issues with supply plan filings. In doing so, this ensures fairness to all bidders, and that bidders will have the ability to adjust the capacity of bids that they, to date, had lost.

Further, to manage any timing issues in procurement, Section 1.5(b) of the DRAM pro forma contract, as several protestants pointed out, allows for reductions in capacity for any months in which registrations are not available, which also gives a bit of leeway should the registrations not be available in time. That said, we expect that procuring in this fashion will leave SDG&E with a substantial pool of registrations remaining to support the 2018 DRAM pilot. SDG&E must allow bidders to use Section 1.5(b) in order to manage timing issues associated with approval of any new contracts it signs from the direction in this Resolution, obtaining customer authorization per Rule 32, receiving customer data, registration with the CAISO, and submittal of supply plans to the utility as required by DRAM rules.

Finally, Energy Division must agree with the utility's proposal to reject bids, including stopping procurement, based on evidence of clear price outliers or market manipulation. This process is informal and no formal approval process (i.e., an Advice Letter) is required.

## **COMMENTS**

San Diego Gas and Electric Company, the Joint DR Parties, and OhmConnect, Inc., each timely filed comments on this Resolution, on September 19, 2016.

The Joint DR Parties' comments express support for this Resolution and did not recommend any modifications.

San Diego Gas and Electric Company expresses its disagreement with the findings of this Resolution, and states its intention to fully comply should this Resolution be approved. San Diego Gas and Electric Company recommends the following three clarifications and one modification to this Resolution:

1. Clarification of how SDG&E is expected to respond if a bidder rejects a lower priced bid in favor of a higher priced bid later in the bid stack.
2. Clarification on what the Energy Division considers to be a "clear price outlier".
3. Clarification of the expected role of the Independent Evaluator as part of Ordering Paragraphs 2 and 5.
4. Modify Resolution to remove Ordering Paragraph 6 as SDG&E already provided these values in Advice Letter 2926-E.

We discuss each of these requests in turn, below.

On the first two requested clarifications, we point to Resolution E-4728, which adopted the 2016 DRAM framework, the foundation on which subsequent DRAM auctions are built. That Resolution included Ordering Paragraph 21, which reads as follows: "The IOUs are directed to each inform the CPUC Energy Division immediately if there are bids that it wishes to reject that are either clear outliers or where there is evidence of market manipulation, present those bids and explain the reasons for rejection in advance of actually rejecting the bids". In this case, if SDG&E suspects that one or more bidder(s) chooses to reject a lower

priced bid in favor of higher priced bid for reasons not driven primarily by the availability of the underlying resource(s) or any other practical resource availability issue, or other suspected market manipulation, then SDG&E has the ability to reject, following discussion with Energy Division. We also decline to designate a clear price outlier in this Resolution, and direct the utility make its own determination of a clear price outlier and approach the Energy Division when that outlier is reached and it wishes to halt the procurement required by this Resolution. SDG&E is required to give Energy Division at least one business day, following discussion, to respond. We do not make any changes to the Findings or Ordering Paragraphs of this Resolution.

Regarding the role of the Independent Evaluator (IE), we direct SDG&E to include the IE in both actions directed by Ordering Paragraphs 2 and 5 of this Resolution. We expect the IE to be involved in the selection of additional bids, and also expect a pared down version of the IE report to be filed with the Advice Letter required by Ordering Paragraph 5. For the latter, a shorter version is perfectly acceptable, which only focuses on the actions taken to comply with this Resolution. We do not expect a description of procedural history, for example. We modify the language of both Ordering Paragraphs to clarify this direction.

Finally, we agree that Ordering Paragraph 6 of this Resolution is duplicative, and delete it.

OhmConnect, Inc., requests the following clarifications to this Resolution:

1. Clarify the definition of “short list”, as used in this Resolution.
2. Clarify the extent to which bidders are able to change their original monthly capacity offerings, and whether such adjustments would harm the bidder in future DRAM auctions.
3. Clarify that it must approve any rejection of bids that are clear price outliers.
4. Clarify that proprietary RA values may be used for bid ranking and selection and not to stop procurement.
5. Clarify that the cost of procurement that is conducted pursuant to this Resolution, and counted against the overall budget cap, is based on any refreshed capacity amounts, and not those originally bid.

We clarify each of these issues in turn, below. We do not, however, make any associated changes to the Findings or Ordering Paragraphs of this Resolution, as the responses are clarifications and not corrections.

To the first issue, the meaning of “shortlist” as used in this Resolution refers to the next bids, in rank order, starting with the first bid after the last bid for which a contract was signed. Thus, the term as used in this Resolution could not be construed to only refer to the bids for which SDG&E already signed contracts.

To the second issue, we state again here that bidders are also allowed to adjust their capacity downward due to the availability of the underlying resource. We make no representations or assumptions about the rules associated with future auctions.

To the third issue, we clarify that the Energy Division must agree with the utility’s proposal to reject bids, including stopping procurement, based on evidence of clear price outliers or market manipulation. However, we make clear that this process is informal and that no formal approval process (i.e., an Advice Letter) is required.

To the fourth issue, proprietary RA values are only used for bid ranking, and not to stop procurement. We have been clear about the instances in which a utility may stop procurement, and do not repeat those here.

To the fifth and final issue, the cost of procurement that is conducted pursuant to this Resolution, and counted against the overall budget cap, must be based on any refreshed capacity amounts and overall contract costs, and not those originally bid.

Though not raised in comments to this Resolution, we also make two additional modifications to this Resolution:

1. The first is to clarify that bidders may also elect to change their expected level of registrations in conjunction with any reductions in capacity.
2. The second is an addition of language regarding required DRAM procurement levels to make explicit that the statement in Resolution

E-4754 that “IOUs are expected to exhaust either” requires that they procure as close to the budget or registration limitation as possible.

## **FINDINGS**

1. Resolution E-4754 approved the IOUs’ advice letters to establish a second DRAM auction, including the proposed auction design, protocols, set-asides, standard pro forma contract, evaluation criteria and non-binding cost estimates.
2. Each utility, including SDG&E, launched its 2017 DRAM RFO in March of 2016.
3. On March 25, 2016, Energy Division sent an e-mail to the Service List for Rulemaking (R.) 13-09-011 with notice that the three IOUs had modified the DRAM RFO schedule to align short list notification and contract signing until after the passage of a decision in Application (A.) 14-06-001 authorizing the intermediate registration step – D.16-06-008.
4. D.16-06-008 approved 30,000 new registrations for SDG&E, and required that the entirety of these new registrations be available no later than the end of February, 2017. This decision also stated that the utilities were to make these new registrations available to support the 2017 DRAM.
5. In Resolution E-4754, the Commission stated its expectation, also in Resolution E-4728, that the utilities were expected to procure DRAM capacity resources up to either their available Rule 24/32 registrations or authorized budget, whichever is reached first.
6. Resolution E-4754 stated the Commission’s disappointment that SDG&E chose to limit its 2016 DRAM procurement, wherein the utility chose to procure up to approximately half of its approved registrations, and did not come close to its budget cap.
7. On July 22, 2016, SDG&E filed AL 2926-E with the Commission, wherein the utility requests approval of six contracts with five counterparties.
8. The use of internal, proprietary RA values for bid selection, is acceptable.

9. In AL 2926-E, SDG&E revealed that it only procured up to the initial registration step of 7,000, authorized for use in the 2016 DRAM.
10. It is reasonable to approve the six contracts that SDG&E has signed and submitted for approval in AL 2926-E, with an effective date as of the date of AL filing, so as not to delay the effectiveness of these contracts.
11. It is reasonable to require SDG&E to procure additional DRAM resources for 2017, to bring the utility into compliance with Resolution E-4754, and the intent of D.16-06-008.
12. There is insufficient time in the year for a new solicitation for DRAM resources, for delivery in 2017.
13. It is reasonable to require SDG&E to return to the next bids in its original shortlist and, in order of ranking, offer contracts at the originally bid price, while allowing for adjustments to capacity.

**THEREFORE IT IS ORDERED THAT:**

1. All six contracts filed by SDG&E in AL 2926-E are approved as submitted. The Commission's approval of these contracts is effective as of the original filing date of the Advice Letter, July 22, 2016.
2. SDG&E is required to immediately return to its shortlist for the 2017 DRAM and approach each bidder, in rank order, and offer a contract at the originally submitted price, while allowing for reductions in capacity, and assumed registrations, at the option of the bidder. SDG&E shall allow bidders at least 5 business days to respond indicating their acceptance or rejection of a contract and any adjusted capacity amount. We direct SDG&E to engage its Independent Evaluator in this process.
3. SDG&E is required to procure either up to its budget cap of \$1.5 million, or to a point at which there is a clear price outlier in bids. For rejection of a clear price outlier, as required in Resolution E-4728, SDG&E must first discuss with the Energy Division before rejecting the bid.
4. SDG&E is required to allow bidders to reasonably utilize Section 1.5(b) of the pro forma contract in order to manage legitimate timing issues associated

with approval of new contracts for the DRAM, including obtaining customer data, registering resources and submitting supply plans.

5. SDG&E is required to file a new Tier 1 Advice Letter 30 days from the Commission vote on this Resolution, with any and all additional contracts for the 2017 DRAM. If all bidders reject the signing of a contract, under the parameters prescribed in this Resolution, SDG&E shall include in its Advice Letter a detailed description of its process, timeline, and any reasons given for rejection. We further direct that the utility include an abbreviated Independent Evaluator report, which focuses on the procurement conducted in compliance with this Resolution.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 29, 2016 the following Commissioners voting favorably thereon:

/s/TIMOTHY J. SULLIVAN  
TIMOTHY J. SULLIVAN  
Executive Director

MICHAEL PICKER  
President  
MICHEL PETER FLORIO  
CATHERINE J.K. SANDOVAL  
LIANE M. RANDOLPH  
Commissioners

Commissioner Carla J. Peterman, being  
necessarily absent, did not participate.